

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JAMES KELLY

Claimant

VS.

COWLEY COUNTY LANDFILL

Respondent

AND

EMPLOYERS MUTUAL CASUALTY

Insurance Carrier

ORDER

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on February 26, 1999.

ISSUES

On appeal, claimant contends the Administrative Law Judge erred in terminating temporary total disability benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the issue raised on appeal is not a jurisdictional issue and the appeal must be dismissed.

The Administrative Law Judge terminated temporary total disability benefits on the basis of the opinion of Dr. Dan E. Butler. That opinion states that claimant is now temporarily totally disabled for medical reasons because of abdominal problems and not because of his work-related injury. The Administrative Law Judge has construed this as an opinion that the compensable shoulder injury would not, by itself, render the claimant temporarily totally disabled.

Claimant points out that Dr. Butler has not seen claimant since he took him off work because of the shoulder injuries. That fact, together with the ambiguity in the opinion expressed by Dr. Butler, certainly raises concerns about whether Dr. Butler intended to indicate the shoulder injury would not render the claimant temporarily totally disabled.

Nevertheless, the question of whether claimant is or is not temporarily totally disabled is a question over which the Administrative Law Judge does have jurisdiction. It is not a jurisdictional issue and the Appeals Board therefore has no jurisdiction to review findings on that question in an appeal from a preliminary hearing order.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on February 26, 1999, should be, and the same is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of April 1999.

BOARD MEMBER

c: Steven R. Wilson, Wichita, KS
Edward D. Heath, Jr., Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director